

MALAYSIAN REPORTS

KEOW SENG & COMPANY v. TRUSTEES OF LEONG SAN TONG KHOO KONGSI (PENANG) REGISTERED.

[F.C. (Raja Azlan Shah L.P., Mohamed Azmi and Abdool-
cader F.JJ.) April 13, 1983]

[Penang – Federal Court Civil Appeal No. 277 of 1982]

Landlord and tenant – Notice to quit addressed to firm and not to individual partners – Whether good in law.

Partnership – Notice to quit to firm and not to individual partners – Whether good in law.

In this case the learned trial judge held on a preliminary issue that a notice to quit addressed to the firm and not to the individual partners was good in law, provided it indicated, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it, to determine the existing tenancy of the firm at a certain time. The tenant-appellant appealed.

Held, dismissing the appellant when a plaintiff serves a notice to quit on the individual partners in their firm name, he serves them individually just as much as if he had set out all their names.

Cases referred to:—

- (1) *Alagappa Chettiar v. Coliseum Cafe* [1962] M.L.J. 111, 113 & 115.
- (2) *Re Leong Cheong & Co. Ex parte Marrisons, Banker & Co. Ltd.* [1930] S.S.L.R. 155.
- (3) *Malay Women's Welfare Association v. Tan Ek Joo Realty Co. Ltd.* 3 M.C. 101.
- (4) *Ang Bock Chwee v. Lim Huan Hee & Ors.* [1982] 1 M.L.J. 174.
- (5) *Sadler v. Whiteman* [1910] 1 K.B. 868, 889.
- (6) *Western National Bank of City of New York v. Perez, Triana & Co.* [1891] 1 Q.B. 304, 314.
- (7) *Eng Chuan & Co. & Ors. v. Four Seas Communication Bank Ltd.* [1982] 2 M.L.J. 81, 82.

HIGH COURT.

Tan Beng Hong for the plaintiffs
N. Chandran for the dependants

Cur. Adv. Vult.

Gunn Chit Tuan J.: By consent of the parties it was ordered under Order 33 rule 2 of the Rules of the High Court, 1980, that the following preliminary question of law be tried before the trial of the above suit, viz.:—

“Is a notice to quit bad in law if it is addressed to a firm and not the individual partners who make up the firm?”

Mr. Tan Beng Hong, counsel for the plaintiffs, conceded that a firm could not be a tenant and

- A referred to *Alagappa Chettiar v. Coliseum Cafe*⁽¹⁾ in which case the former Court of Appeal had held, ‘*inter-alia*’, that the letting in that case to a firm of partners carrying on business of a cafe and hotel in Nos. 98, 100 and 102 Batu Road (now known as Jalan Tuanku Abdul Rahman, Kuala Lumpur) created the relationship of landlord and tenant between the previous landlord on the one hand and the partners on the other, and though there had been a change of partners over the years, members of each new partnership arising from each change by virtue of the new repealed section 206(g) & (j) of the Contracts (Malay States) Ordinance, 1950, had continued *de jure* to assume obligations and enjoy benefits of the tenancy. This followed from the fact that when the tenancy agreement was made no reliance was placed upon the “personnel of the partners”.
- C Counsel submitted that *Alagappa Chettiar's*⁽¹⁾ case was not authority for the contention that a notice to quit addressed to a firm only is good. He, however, submitted that the guiding principle was whether or not in all the circumstances of the case a notice to quit has led to any confusion as to the intention of the giver. Bearing in mind that one was not concerned with the length of the notice or the service thereof, it was his submission that the mere fact that a notice was addressed to a firm instead of the individual partners who make up the firm did not necessarily invalidate the notice because it did not and would not lead to any confusion as to the intention of the giver.
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- Counsel also referred to *Re Leong Cheong & Co. Ex parte Harrisons, Barker & Co., Ltd.*⁽²⁾ in which case it was held that a bankruptcy notice could validly be directed to a firm in its firm name and served at the principal place of business of the firm on one of the partners or a person having the control and management of the business under the provisions of Bankruptcy Rule 219. The notice was then deemed to have been served on all members of the firm. Although that case was concerned with bankruptcy proceedings and with the special provisions of the said Bankruptcy Rule 219, it was the submission of Mr. Tan that the said decision was helpful to show that it was not necessary that all the partners in a firm must be named in the bankruptcy notice.
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Finally, Mr. Tan referred to a passage on “Form of notice to quit” in *Hill & Redman's Law of Landlord and Tenant*. In the latest edition (17th edn.) of the said text-book, the relevant

passage is as follows:—

"Subject to any term of the tenancy, and to any statutory requirements the form of notice is immaterial provided that it indicates, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it, to determine the existing tenancy at a certain time, and that the party to whom it is given could not be misled as to the intention of the giver, though the language is ambiguous and lame. The notice need not be addressed to the tenant by name, provided it is properly served on him . . . Errors in the description of the premises, or as to the christian name of the tenant, will not invalidate the notice if the tenant is not misled by them . . ."

Mr. Chandran, counsel for the defendant, agreed that a firm as such could not be a tenant and he referred to *Malay Women's Welfare Association v. Tan Ek Joo Realty Co. Ltd.*⁽³⁾ in which case Chua J. held that an unincorporated association was not competent to hold an interest in land. Counsel also referred to *Alagappa Chettiar's*⁽¹⁾ case and the recent Singapore case of *Ang Bock Chwee v. Lim Huan Hee & Ors.*⁽⁴⁾ in which case Rajah J. held 'inter-alia' that an association registered under the Societies Act could not be a tenant of property or hold an estate or interest in land. It was the contention of counsel that as the defendant firm was an unincorporated association and was registered under the Registration of Businesses Act 1956 (Revised — 1978), the plaintiffs had every opportunity prior to the issue of the notice to quit to ascertain who the actual partners were at the material time. He further submitted that the said Act was specifically designed for the purpose of ascertaining particulars of the partners so that proper notice could be addressed to them and not the firm, which could not be a tenant, and therefore in law there was no obligation to comply with the notice to quit.

With respect, I did not agree with the above contention of Mr. Chandran that a notice to quit should be addressed to all partners and would prefer to adopt the above-quoted passage from *Hill & Redman's Law of Landlord and Tenant* and the following statement appearing in paragraph 1 — 1971 in *Woodfall's Law of Landlord and Tenant Vol. 1* (28th edn.) on the principle governing what notice to quit is required:—

"What notice to quit is necessary is governed —

1. By any express stipulation on the subject.
2. By local custom.
3. By the common law.
4. By statute."

- A Therefore, where there is no express stipulation as to the notice to be given by either party to determine the tenancy nor, as far as I am aware, any local custom or any special statutory provision, then even a parol notice to quit is generally sufficient at common law whether given by or on behalf of the landlord or the tenant. A notice to quit is best given in writing and no particular form is normally necessary. I therefore ruled that a notice to quit is not bad in law if it was addressed to a firm and not to the individual partners who make up the firm, provided that it indicated, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it, to determine the existing tenancy of the firm at a certain time.

The defendant appealed against the above Judgment to the Federal Court.

D FEDERAL COURT.

N. Chandran for the appellants.
Tan Beng Hong for the respondents.

Cur. Adv. Vult.

- E Raja Azlan Shah L.P. (delivering the Judgment of the Court): The only question of importance in this appeal is whether a notice to quit addressed to a firm and not the individual partners who make up the firm is good in law.

- F The learned judge who heard this case as a preliminary issue held that it was good in law provided that it indicated, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it, to determine the existing tenancy of the firm at a certain time. With the latter proposition we agree. We have always treated a notice to quit with strictness. G We find support for this view from a passage in *Hill & Redman's Law of Landlord and Tenant* (17th Edn.) at page 483:—

- H "Subject to any term of the tenancy, and to any statutory requirements the form of notice is immaterial provided that it indicates, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it, to determine the existing tenancy at a certain time, and that the party to whom it is given could not be misled as to the intention of the giver, though the language is ambiguous and lame. The notice need not be addressed to the tenant by name, provided it is properly served on him. . . . Errors in the description of the premises, or as to the christian name of the tenant, will not invalidate I

We now address ourselves to the point in issue, that is, is the notice to quit addressed to a firm good in law? We start with the premise that a partnership firm is not a legal entity in law (see *Alagappa Chettiar v. Coliseum Cafe*⁽¹⁾)

and as such cannot hold a tenancy. This characteristic is peculiar to the common law concept of an unincorporated entity and has caused difficulties in the past. Some of these difficulties mainly those of a procedural nature have been met by rules of court. The Rules of the High Court, 1980 (Order 77) provide for the commencement of legal proceedings by and against partnership firms in the firm name which is merely a convenient method of encapsulating the individual partners who constitute the partnership firm. The firm name is not in itself the name of any person other than the partners because in the words of Farewell L.J. in *Sadler v. Whiteman*⁽⁵⁾:

"The fallacy is to say that a partner in a firm does not, but the firm does, carry on business. In English law a firm as such has no existence; partners carry on business both as principals and as agents for each other within the scope of the partnership business; the firm name is a mere expression; the firm name is a mere expression, not a legal entity, although for convenience under Order XLVIII. A it may be used for the sake of suing and being sued."

A plaintiff who sues such partners in their firm name sues them individually just as much as if he had set out all their names. Lindley L.J. said of this in *Western National Bank of City of New York v. Perez, Triana & Co.*:

"When a firm's name is used, it is only a convenient method for denoting those persons who compose the firm at the time when that name is used, and a plaintiff who sues partners in the name of their firm in truth sues them individually, just as much as if he had set out all their names."

A fortiori when a plaintiff serves a notice to quit on the individual partners in their firm name, he serves them individually just as much as if he had set out all their names. We find further support of this view in the following passage from the speech of Lord Diplock in the recent Privy Council case of *Eng Chuan & Co. & Ors. v. Four Seas Communications Bank Ltd.*⁽⁷⁾

"The notice to quit dated January 29, 1976, addressed by solicitors on behalf of the Bank to "Eng Chuan & Co." acknowledge the existence of a tenancy in the person or persons to whom what description properly applies, since it requires them to "quit and deliver up" possession of the Premises "on February 29, 1976 (or at the expiration of the month of your tenancy which will expire next after the end of one calendar month from the time of the service of this Notice)". The only persons to whom that description properly applied, and had done so ever since December 31, 1953, were the three personal appellants whose names had appeared in the Register of Business Names as constituting the Firm of Eng Chuan and Company from December 31, 1953 until it ceased trading

A in 1971. In their Lordships' view, if the Bank sought to rely upon the monthly tenancy being vested in someone other than the personal appellants as tenant under that description, the onus lay upon the Bank to prove it."

We accordingly endorse the learned Judge's conclusion on the issue presented and dismiss this appeal with costs. The deposit lodged in court will be paid out to the respondent to account of costs.

Appeal dismissed.

C Solicitors: *Presgrave & Mathews; Tan Beng Hong & Co.*

D NATIONAL INSURANCE CO. LTD. v. ABDUL HAFIDZ BIN HAJI ABDUL RAHMAN & ANOR.

[F.C. (Salleh Abas C.J. (Malaya), Wan Suleiman & Seah F.JJ.) March 8 & April 14, 1983]

[Johore Bahru — Federal Court Civil Appeal No. 170 of 1981]

E *Insurance — Plaintiffs injured in road traffic accident by car — Judgment obtained against driver of car — Motor car insured with second defendants by owner — Driver driving with permission of owner — Driver also covered by insurance with first defendants (appellants) in respect of his own car — Policy indemnifying him while driving motor car not belonging to him — Whether first or second defendants liable to satisfy judgment — Road Traffic Ordinance, S. 80.*

F *Road Traffic — Insurance policy — Which insurer to be liable.*

G In this case the plaintiffs (respondents) were injured in a road traffic accident by a motor car driven by one Ko Beng Lai. They sued the driver and obtained judgment against him. The car belonged to one Kwang Shi Ching who insured it with the second defendants. The policy covered user of car by an authorised driver and in this case the driver drove with the permission of the owner. The driver was himself covered by an insurance in respect of his own motor car, the policy being issued by the first defendants — appellants. The judgment not having been paid the plaintiffs sued the first and second defendants. At the trial it was agreed that the issues to be decided were —

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- (a) whether the policy of the first defendants or the second defendants were at risk at the material time of the accident;
 - (b) whichever defendants found to be liable could they call for rateable contribution from the other defendants.

The learned trial judge held that the first defendants were liable to satisfy the judgment as their policy was the